

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

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Docket No. 180,927

ORDER

Claimant requests review of the Award of Administrative Law Judge Thomas F. Richardson entered in this proceeding on January 27, 1995. The Appeals Board heard oral argument on June 22, 1995.

APPEARANCES

Claimant appeared by his attorney, Harold K. Greenleaf, of Liberal, Kansas. The respondent and insurance carrier appeared by their attorney, Jeffrey E. King, of Salina, Kansas. The Workers Compensation Fund appeared by its attorney, Randall D. Grisell, of Garden City, Kansas. There were no other appearances.

RECORD

The record considered by the Appeals Board is enumerated in the Award of the Administrative Law Judge.

STIPULATIONS

The stipulations of the parties are listed in the Award of the Administrative Law Judge and are adopted by the Appeals Board for this review.

ISSUES

The Administrative Law Judge denied claimant's request for benefits because the Judge found he failed to prove timely written claim. The claimant requested this review and contends the Administrative Law Judge erred in this finding. That is the sole issue now before the Appeals Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

For the reasons expressed below, the Award of the Administrative Law Judge should be affirmed.

Although claimant's last day of employment with respondent was December 9, 1991, claimant alleges he was injured while working for respondent from 1982 through May 6, 1993. Claimant served written claim for benefits upon respondent on July 3, 1993. Claimant alleges he has undergone a number of back surgeries and a total left hip replacement either as a direct result of injuries, or as a natural and probable consequence of earlier injuries, allegedly sustained while working for the respondent. Claimant alleges he initially injured his back while working for the respondent sometime in 1982 when he was helping a co-worker repair a combine tire. Claimant testified his back gradually worsened. Sometime in 1983, claimant received a chymopapain injection and then, in October 1983, underwent a L4-S1 hemilaminectomy and L4-5 discectomy. After recuperating from this surgery, claimant returned to work for respondent with restrictions. Despite his medical restrictions, claimant eventually returned to his regular job duties and in 1987 sustained a fracture of a lamina in his lumbar spine where he was previously operated. Claimant recalls no specific incident that may have caused the fracture. After recuperating from his second back surgery performed in May 1987, claimant again returned to work for respondent with medical restrictions similar to those he had before the surgery. As before, claimant eventually returned to perform his regular job duties despite his medical restrictions.

Claimant's condition worsened and he again sought medical treatment for his back in the Fall of 1991. In December 1991, claimant had a third back surgery which was comprised of a L4-5 decompressive laminectomy and a fusion of L3 through L5, with screws, rods, and a bone graft from the left hip. After this surgery, claimant did not return to work for the respondent. In October 1992, claimant underwent a total left hip replacement.

The evidence is uncontroverted claimant did not serve written claim for any of these incidents or medical conditions until July 1993. Although claimant's counsel is aware an injured worker generally has two hundred (200) days from the date of accident or payment

of last compensation to serve written claim for benefits upon the respondent, or one year when the respondent fails to file an accident report as required by statute, claimant's counsel argues the time to serve written claim was extended because claimant's medical bills were paid by health insurance coverage provided by respondent and, thus, should be considered medical compensation provided in lieu of that required by the Workers Compensation Act. In the alternative, claimant's counsel argues the time to file written claim was extended because claimant was allegedly retained on respondent's payroll until April 1993.

Claimant's arguments are unconvincing. Although there is case law that would indicate the payment of medical bills by a health insurance carrier might extend the time for filing written claim when an employer wrongfully or mistakenly files a claim with the wrong carrier, that argument would only pertain to the alleged 1982 injury. The record indicates the only incident or accident claimant allegedly reported to respondent was the 1982 incident with the combine tire. The evidence does not in anyway support the contention that respondent improperly or mistakenly filed a claim for health insurance benefits rather than for workers compensation benefits for any of claimant's medical treatment after 1982. Claimant's argument that the time to serve written claim was extended because claimant was continued on the payroll, or otherwise received a "salary continuation" as referenced in claimant's brief, is likewise found to be without merit. Based upon the record as a whole, the Appeals Board finds claimant failed to serve timely written claim upon the respondent as required by K.S.A. 44-520a.

The findings and analysis of the Administrative Law Judge are correct and adopted by the Appeals Board for this review to the extent they are not inconsistent with the findings set forth herein.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Thomas F. Richardson, dated January 27, 1995, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Harold K. Greenleaf, Liberal, Kansas
 Jeffrey E. King, Salina, Kansas
 Randall D. Grisell, Garden City, Kansas
 Thomas F. Richardson, Administrative Law Judge
 David A. Shufelt, Acting Director